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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,585	01/30/2006	Norman Wittke	87305.0040	5652
36734 7590 12/23/2008 BAKER & HOSTETLER LLP WASHINGTON SQUARE, SUITE 1100 1050 CONNECTICUT AVE. N.W. WASHINGTON, DC 20036-5304				
EXAMINER				
MERLINO, ALYSON MARIE				
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3673				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/522,585

Applicant(s)

WITTKKE ET AL.

Examiner

ALYSON M. MERLINO

Art Unit

3673

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 10-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 September 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The examiner acknowledges applicant's submission of claims 1-7, 10-12, with the amendments to claim 13, and the cancellation of claims 8, 9, 14, and 15 filed on 22 September 2008.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the force initiated by the lock catch must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claims 1-7 and 10-13 are rejected** under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. **Claim 1 is rejected** under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: the structure of the ejector and the function of these components to achieve an ejecting of the lock catch.

6. **In regards to claim 13**, it is unclear to which component applicant is referring in the limitation "a change-over" in view of claim 1, however, in view of the specification it seems as though the "change-over" is equivalent to the "transmission element" of claim

1. For examination purposes, the change over will be considered equivalent to the transmission element of claim 1 until further clarification from applicant.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. **Claims 1-9, 11-13, and 15 are rejected** under 35 U.S.C. 102(b) as being anticipated by Fuss (DE 1 138 334).
9. **In regards to claims 1 and 9**, Fuss discloses a door opener (Figure 1) for releasing a door, which is provided with a lock catch counterpart 12 (solid-structured), with a controllable securing element 22 to secure the door opener against unauthorized opening of the door. Fuss discloses an ejector 27 for ejecting a lock catch 10 from the lock catch counterpart, and a transmission element 14 between the lock catch counterpart and the ejector (Figure 2) with which a force initiated by the lock is transferred to the ejector (Figures 4-6).
10. **In regards to claim 2**, Fuss discloses that the ejector is mounted on the lock catch counterpart (Figure 4).
11. **In regards to claim 3**, Fuss discloses that the ejector includes a slide plate (end of ejector near reference character 12b, Figure 5) that is mounted on the lock catch counterpart so that it swivel (Figures 4-6).
12. **In regards to claim 4**, Fuss discloses that a swivel axis (axis running through plate from the tip of the ejector near reference character 27 back through the direction of the spring, Figure 6) of the slide plate runs parallel to the movement direction of the lock catch counterpart (Figure 6).
13. **In regards to claim 5**, Fuss discloses that the lock catch counterpart is designed as a swivel catch (apparent from movement in Figure 6) and that the swivel axis of the slide plate runs perpendicular to an axis of the swivel catch (axis running through pin 13, Figure 6).

14. **In regards to claim 6**, Fuss discloses that the lock catch counterpart is designed as a sliding catch, especially, a linear sliding catch (catch slides within the opener through a linear movement in Figures 5 and 6).
15. **In regards to claim 7**, Fuss discloses that the transmission element includes a lever connection (Figure 1) with a controlled two-armed change-over (apparent from Figures 1-3) in which one lever arm (end of 14 near reference character 22a, Figure 3) serves as a locking element for the lock catch counterpart (engagement with securing element 22 locks the counterpart, Figures 1-3), and that another lever arm (middle portion near reference character 14, Figure 2) is in active connection with a pin 29 that engages with the slide plate (Figures 4-6).
16. **In regards to claim 8**, Fuss discloses that the "release reactors" 26 for the securing element are provided that achieve locking and unlocking actuation magneto-restrictively (Figures 1-3).
17. **In regards to claims 11**, Fuss discloses that the transmission element 12 is prestressed with a prestress element 17.
18. **In regards to claim 12**, Fuss discloses a prestress element 31 is provided to adjust a prestress between the lock catch counterpart and the transmission element (Figure 1).
19. **In regards to claim 13**, Fuss discloses a pressure piece 31 is provided between the lock catch counterpart and the change-over of the transmission element for calibrating purposes (Figures 1-3).

20. **In regards to claim 15**, Fuss discloses a roller element 12c (lock catch rolls over surface, Figure 5).
21. **Claims 1, 8-12, 14, and 15 are rejected** under 35 U.S.C. 102(b) as being anticipated by Fuss (US-4838591).
22. **In regards to claims 1 and 9**, Fuss discloses a door opener (Figure 1) for releasing a door, which is provided with a lock catch counterpart 4 (solid-structured), with a controllable securing element 25 to secure the door opener against unauthorized opening of the door. Fuss discloses an ejector 9 for ejecting a lock catch from the lock catch counterpart, and a transmission element 8 between the lock catch counterpart and the ejector (Figure 1) with which a force initiated by the lock is transferred to the ejector (Figures 1-4).
23. **In regards to claim 8**, Fuss discloses that the "release reactors" 20 for the securing element are provided that achieve locking and unlocking actuation mechanically (Figures 1-4).
24. **In regards to claims 11**, Fuss discloses that the transmission element 8 is prestressed with a prestress element 10.
25. **In regards to claim 12**, Fuss discloses a prestress element 10 is provided to adjust a prestress between the lock catch counterpart and the transmission element (Figure 1).
26. **In regards to claim 14**, Fuss discloses a closed cover plate (portion of component 1 near reference character 9, Figure 2).

27. **In regards to claim 15**, Fuss discloses a roller element (curved portion of 4 between reference characters A and 6, Figure 2).

Claim Rejections - 35 USC § 103

28. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

29. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

30. **Claim 10 is rejected** under 35 U.S.C. 103(a) as being unpatentable over Fuss (DE 1 138 334) in view of Cavestri (EP 0 851 077 A1).

31. **In regards to claim 10**, Fuss discloses the door opener as applied to claim 1 above, having a front part (portion near reference character 12, Figure 5) and base part (portion near reference character 12c, Figure 4) of the lock catch counterpart, but fails to disclose that the front part can be adjusted relative to the base part. Cavestri teaches

a door opener similar to the opener disclosed by Fuss, having a lock catch counterpart 13 with a front part 37 being adjustable by slots 44 to base part 35. Since the inclusion of adjusting components on the lock catch counterpart would not affect the counterparts ability to engage with the lock catch, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the lock catch counterpart adjustable in order to accommodate various lengths of lock catches and door sizes.

32. **Claim 14 is rejected** under 35 U.S.C. 103(a) as being unpatentable over Fuss (DE 1 138 334) in view of Vadacchino et al. (US-4984835).

33. **In regards to claim 14**, Fuss discloses the door opener as applied to claims 1-9 and 11-13 above, but fails to disclose that a plate covers the opener. Vadacchino et al. teaches a door opener housed in a housing with a plate 16 covering the components of the opener. Since the inclusion of a plate on the door opener would not affect the opener's engagement ability with the lock catch, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a plate in order to secure and protect the components of the opener.

Response to Arguments

34. Applicant's arguments filed 22 September 2008 have been fully considered but they are not persuasive.

35. In regards to applicant's remarks concerning prior art reference Fuss '334, it is clear from Figure 7 of applicant's application that in order for components 10 and 18 to be capable of ejecting the lock catch 13, the spring within the lock catch must be stronger than spring 28 in order to push in ejector components 10 and 18 by

compressing spring 28. It is also clear that the spring 28 associated with the ejector component 27 of Fuss '334 is weaker than the spring in lock catch 10 in the same manner as applicant's device in order to place the device disclosed by Fuss '334 in the same position, Figure 5 of Fuss, as applicant's device in Figure 7. Furthermore, it is clear from the movement between Figures 7 and 9 of applicant's device that components 3, 10, and 18 pivot in response to a force initiated by the lock catch in the same manner that components 12 and 27 are pivoted in Figure 6 of Fuss. As noted in the 112, second paragraph, rejection above, the claim does not recite the specific structure of the ejector.

36. In regards to applicant's remarks concerning prior art reference Fuss '591, as noted above, the claim does not recite the specific structure of the ejector, only an ejector "for" ejecting. As noted in the remarks above, the ejector components of applicant's device must be pushed into the door opener to place them in the position shown in Figure 7 to cause the "ejecting." Fuss '591 discloses that the ejector 9 and lock catch counterpart 4 move together to position B to allow the "ejecting" of the lock catch. It is noted that claim 1 does not recite movements or directions of movements of the ejector and its components relative to the lock catch, and the direction of movement of the lock catch with respect to the device. Therefore, since ejector 9 disclosed by Fuss '591 is moved to a position where the lock catch can be "ejected" from the lock catch counterpart, than the claim limitations are met.

37. The examiner appreciates applicant's inclusion of clear new drawings.

38. The rejection of claim 13 under 35 U.S.C. 112, second paragraph, set forth in the previous office action is maintained in part because applicant did not clarify to which component the limitation "change-over" refers and whether the examiner's assumption, in view of the specification, that the "change-over" is equivalent to the transmission element of claim 1 is correct.

39. The claim objections and rejections under 35 U.S.C. 112 of claims 8, 9, 14, and 15 are moot since these claims have been cancelled.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALYSON M. MERLINO whose telephone number is (571)272-2219. The examiner can normally be reached on Monday through Friday, 7:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patricia L Engle/
Supervisory Patent Examiner,
Art Unit 3673

AM
December 18, 2008